

AMENDED IN SENATE MAY 31, 2006

AMENDED IN ASSEMBLY MAY 11, 2006

AMENDED IN ASSEMBLY MARCH 29, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1966

Introduced by Assembly Member Garcia

(Principal ~~coauthor: Senator Battin~~ *coauthors: Senators Battin and Ducheny*)

(Coauthors: Assembly Members Benoit, Shirley Horton, Lieber, Maze, Mountjoy, Salinas, and Strickland)

February 9, 2006

An act to amend Section 51298 of the Government Code, relating to capital investment incentive programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 1966, as amended, Garcia. Capital investment incentive programs: powerplants.

Existing law establishes the capital investment incentive program that authorizes a local government to pay a capital investment incentive amount, as defined, to a proponent of a qualified manufacturing facility, including what types of business operate the facility.

This bill would include within those types of business, a business engaged in the operation of a powerplant used for the production of electricity from one or more specified energy sources.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 51298 of the Government Code is amended to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments opportunities to attract large manufacturing facilities to invest in their communities and to encourage industries such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

1 (1) “Qualified manufacturing facility” means a proposed
2 manufacturing facility that meets all of the following criteria:

3 (A) The proponent’s initial investment in that facility, in real
4 and personal property, necessary for the full and normal
5 operation of that facility, made pursuant to the capital investment
6 incentive program, that comprises any portion of that facility or
7 has its situs at that facility, exceeds one hundred fifty million
8 dollars (\$150,000,000). Compliance with this subparagraph shall
9 be certified by the Trade and Commerce Agency upon the
10 agency’s approval of a proponent’s application for certification
11 of a qualified manufacturing facility. An application for
12 certification shall be submitted by a proponent to the agency in
13 writing in the time and manner as specified by the agency.

14 (B) The facility is to be located within the jurisdiction of the
15 electing county, city and county, or city to which the request is
16 made for payment of capital investment incentive amounts.

17 (C) The facility is operated by any of the following:

18 (i) A business described in Codes 3500 to 3899, inclusive, of
19 the Standard Industrial Classification (SIC) Manual published by
20 the United States Office of Management and Budget, 1987
21 edition, except that “January 1, 1997,” shall be substituted for
22 “January 1, 1994,” in each place in which it appears.

23 (ii) A business engaged in the recovery of minerals from
24 geothermal resources, including the proportional amount of a
25 geothermal electric generating plant that is integral to the
26 recovery process by providing electricity for it.

27 (iii) A business engaged in the operation of a powerplant used
28 for the production of electricity from one or more of the
29 following energy resources: solar thermal, wind, photovoltaic,
30 geothermal, solid-fuel biomass, fuel cells using renewable fuel,
31 small hydroelectric generation of 30 megawatts or less,
32 ~~municipal solid waste conversion~~, digester gas, landfill gas,
33 ocean wave, ocean thermal, or tidal current, and any additions or
34 enhancements to the facility using that technology.

35 (D) The proponent is either currently engaged in commercial
36 production or engaged in the perfection of the manufacturing
37 process, or the perfection of a product intended to be
38 manufactured.

39 (2) “Proponent” means a party or parties that meet all of the
40 following criteria:

1 (A) The party is named in the application to the county, city
2 and county, or city within which the qualified manufacturing
3 facility would be located for a permit to construct a qualified
4 manufacturing facility.

5 (B) The party will be the fee owner of the qualified
6 manufacturing facility upon the completion of that facility.
7 Notwithstanding the previous sentence, the party may enter into
8 a sale-leaseback transaction and nevertheless be considered the
9 proponent.

10 (C) If a proponent that is receiving capital investment
11 incentive amounts subsequently leases the subject qualified
12 manufacturing facility to another party, the lease may provide for
13 the payment to that lessee of any portion of a capital investment
14 incentive amount. Any lessee receiving any portion of a capital
15 investment incentive amount shall also be considered a
16 proponent for the purposes of subdivision (d).

17 (3) “Capital investment incentive amount” means, with respect
18 to a qualified manufacturing facility for a relevant fiscal year, an
19 amount up to or equal to the amount of ad valorem property tax
20 revenue derived by the participating local agency from the
21 taxation of that portion of the total assessed value of that real and
22 personal property described in subparagraph (A) of paragraph (1)
23 that is in excess of one hundred fifty million dollars
24 (\$150,000,000).

25 (4) “Manufacturing” means the activity of converting or
26 conditioning property by changing the form, composition,
27 quality, or character of the property for ultimate sale at retail or
28 use in the manufacturing of a product to be ultimately sold at
29 retail. Manufacturing includes any improvements to tangible
30 personal property that result in a greater service life or greater
31 functionality than that of the original property.

32 (c) A city, special district, or school district may, upon the
33 approval by a majority of the entire membership of its governing
34 body, pay to the county, city and county, or city an amount equal
35 to the amount of ad valorem property tax revenue allocated to
36 that city, special district, or school district, but not the actual
37 allocation, derived from the taxation of that portion of the total
38 assessed value of that real and personal property described in
39 subparagraph (A) of paragraph (1) of subdivision (b) that is in
40 excess of one hundred fifty million dollars (\$150,000,000). If a

1 school district elects to make the payment authorized pursuant to
2 this subdivision, that payment shall not result in any increase in
3 the amount of state General Fund moneys required to be
4 allocated pursuant to Section 8 of Article XVI of the California
5 Constitution, nor shall it result in any increase in the amount of
6 state General Fund moneys required to be apportioned to the
7 school district pursuant to Section 2558 or 42238 of the
8 Education Code.

9 (d) A proponent whose request for the payment of capital
10 investment incentive amounts is approved by an electing county,
11 city and county, or city shall enter into a community services
12 agreement with that county, city and county, or city that includes,
13 but is not limited to, all of the following provisions:

14 (1) A provision requiring that a community services fee be
15 remitted by the proponent to the county, city and county, or city,
16 in each fiscal year subject to the agreement, in an amount that is
17 equal to 25 percent of the capital investment incentive amount
18 calculated for that proponent for that fiscal year, except that in no
19 fiscal year shall the amount of the community services fee
20 exceed two million dollars (\$2,000,000).

21 (2) A provision specifying the dates in each relevant fiscal
22 year upon which payment of the community services fee is due
23 and delinquent, and the rate of interest to be charged to a
24 proponent for any delinquent portion of the community services
25 fee amount.

26 (3) A provision specifying the procedures and rules for the
27 determination of underpayments or overpayments of a
28 community services fee, for the appeal of determinations of any
29 underpayment, and for the refunding or crediting of any
30 overpayment.

31 (4) A provision specifying that a proponent is ineligible to
32 receive a capital investment incentive amount if that proponent is
33 currently delinquent in the payment of any portion of a
34 community services fee amount, if the qualified manufacturing
35 facility is constructed in a manner materially different from the
36 facility as described in building permit application materials, or if
37 the facility is no longer operated as a qualified manufacturing
38 facility meeting the requirements of paragraph (1) of subdivision
39 (b). If a proponent becomes ineligible to receive a capital
40 investment incentive amount as a result of an agreement

1 provision included pursuant to this subparagraph, the running of
2 the number of consecutive fiscal years specified in an agreement
3 made pursuant to subdivision (a) is not tolled during the period in
4 which the proponent is ineligible.

5 (5) A provision that sets forth a job creation plan with respect
6 to the relevant qualified manufacturing facility. The plan shall
7 specify the number of jobs to be created by that facility, and the
8 types of jobs and compensation ranges to be created thereby. The
9 plan shall also specify that for the entire term of the community
10 services agreement, both of the following shall apply:

11 (A) All of the employees working at the qualified
12 manufacturing facility shall be covered by an
13 employer-sponsored health benefits plan.

14 (B) The average weekly wage, exclusive of overtime, paid to
15 all of the employees working at the qualified manufacturing
16 facility, who are not management or supervisory employees,
17 shall be not less than the state average weekly wage.

18 (C) Nothing in this chapter shall be interpreted to require or
19 authorize any recipient powerplant qualified under clause (iii) of
20 subparagraph (C) of paragraph (1) of subdivision (b) to reduce
21 wages or benefits established under any collective bargaining
22 agreement or state or federal prevailing wage law.

23 For the purpose of this subdivision, “state average weekly
24 wage” means the average weekly wage paid by employers to
25 employees covered by unemployment insurance, as reported to
26 the Employment Development Department for the four calendar
27 quarters ending June 30 of the preceding calendar year.

28 (6) (A) In the case in which the proponent fails to operate the
29 qualified manufacturing facility as required by the community
30 services agreement, a provision that requires the recapture of any
31 portion of any capital investment incentive amounts previously
32 paid to the proponent equal to the lesser of the following:

33 (i) All of the capital investment incentive amounts paid to the
34 proponent, less all of the community services fees received from
35 the proponent, and less any capital investment incentive amounts
36 previously recaptured.

37 (ii) The last capital investment incentive amount paid to the
38 proponent, less the last community services fee received from the
39 proponent, multiplied by 40 percent of the number of years
40 remaining in the community services agreement, but not to

1 exceed 10 years, and less any capital investment incentive
2 amounts previously recaptured.

3 (B) If the proponent fails to operate the qualified
4 manufacturing facility as required by the community services
5 agreement, the county, city and county, or city may, upon a
6 finding that good cause exists, waive any portion of the recapture
7 of any capital investment incentive amount due under this
8 subdivision. For the purpose of this subdivision, good cause
9 includes, but is not limited to, the following:

10 (i) The proponent has sold or leased the property to a person
11 who has entered into an agreement with the county, city and
12 county, or city to assume all of the responsibilities of the
13 proponent under the community services agreement.

14 (ii) The qualified manufacturing facility has been rendered
15 inoperable and beyond repair as a result of an act of God.

16 (C) For purposes of this subdivision, failure to operate a
17 qualified manufacturing facility as required by the community
18 services agreement includes, but is not limited to, the failure to
19 establish the number of jobs specified in the jobs creation plan
20 created pursuant to paragraph (5).

21 (e) (1) Each county, city and county, or city that elects to
22 establish a capital investment incentive program shall notify the
23 Trade and Commerce Agency of its election to do so no later
24 than June 30th of the fiscal year in which the election was made.

25 (2) In addition to the information required to be reported
26 pursuant to paragraph (1), each county, city and county, or city
27 that has elected to establish a capital investment incentive
28 program shall notify the Trade and Commerce Agency each
29 fiscal year no later than June 30th of the amount of any capital
30 investment incentive payments made and the proponent of the
31 qualified manufacturing facility to whom the payments were
32 made during that fiscal year.

33 (3) The Trade and Commerce Agency shall compile the
34 information submitted by each county, city and county, and city
35 pursuant to paragraphs (1) and (2) and submit a report to the
36 Legislature containing this information no later than October 1,
37 every two years commencing October 1, 2000.

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